sequent stage of the journey is a reasonably foreseeable consequence of actionable delay by a carrier to whom the ticket is presented at a time, when, the ticket would be good for the balance of the journey only in the absence of such delay. Nor is it a defense to such a carrier to prove delay by prior carriers. It is immaterial that an earlier train could have been taken on the defendant's road,[23] for a passenger has a right to defer beginning any stage of his journey until the last train which, if on time, will enable him ultimately to present his ticket to the final carrier before the expiration of the time limit. This follows because of the stopover privileges attaching to a coupon ticket. If the delay caused by the various carriers is non-actionable the passenger is without remedy. The consequent hardship is obvious, and it would seem that in cases of this character the courts should be liberal in their construction of the reasonableness of the time limitation.

THE POSITION OF A PRINCIPAL WHOSE AGENT HAS EXACTED FROM THE BORROWER A USURIOUS BONUS.—A recent New York case, *Silverman* v. *Katz* (1910) 120 N. Y. Supp. 790, affirms the doctrine, which despite vigorous criticism[1] is now generally accepted, that a principal, whose agent without his knowledge or consent, in addition to the legal rate of interest, exacts from the borrower a commission for himself, is not chargeable with usury.

The opposing argument rests largely on the ground that the entire transaction between the borrower and agent is a single contract. This, however, apparently disregards the actual facts since no one of the three parties concerned intends that the agent's exaction for himself shall be a part, of the contract between lender and borrower. The borrower is not entitled so to regard the transaction for, since such a contract would be illegal, the agent cannot be presumed to have authority to make it.[2] Moreover, the agent's demand is clearly a personal one, interposed as a condition precedent to the creation of the principal contract.

A further objection to the binding force of the agent's act upon the principal is found in the fact that although the principal is innocent, the borrower is cognizant of the wrongful act. The resulting hardship upon the lender and the danger of opening a door to fraud upon him that would be created by allowing the borrower to set up the plea of usury under such circumstances have undoubtedly been important factors in the adoption of the present rule. The borrower can scarcely be said to be in a position to invoke the rule of the principal's liability for the wrongful acts of the agent since the reason on which that liability ordinarily rests—that where one of two innocent parties must suffer, the loss should fall on him who made possible the wrongdoing—operates in this case to throw the responsibility on the borrower. Indeed, the latter can be said to be innocent only on the theory that he acted involuntarily and as a victim of oppression. Although this theory may so apply where the borrower is dealing directly with a principal, when he negotiates with an agent the fact that the transaction proposed by the latter is illegal should put the borrower on notice

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[23]Little Rock etc. Ry. Co. *v.* Dean *supra,* at 533.

[1]Condit *v.* Baldwin (1860) 21 N. Y. 219 (dissenting opinion); Bell *v.* Day (1865) 32 N. Y. 165 (dissenting opinion); New England etc. Co. *v.* Hendrickson (1882) 13 Neb. 157; Robinson *v.* Blaker (1902) 85 Minn. 242.

[2]Call *v.* Palmer (1885) 116 U. S. 98.

to question the existence of the agent's authority to make such a contract. Some courts, however, though admitting that no authorization can be found where the agency is special, hold that where the loan is made by a general agent the principal is liable on the theory of a presumed authorization.[3] The distinction seems fallacious for the reason that the absence of authority to exact usury is not the result of a secret limitation of the agent's authority but of a presumption of law of which third parties are charged with notice. Where the principal is chargeable with knowledge of the general agent's methods of business he may, of course, be made liable on that ground.[4]

The doctrine has been further criticised on the ground that it proceeds on the theory that the principal can not recover the commission exacted by his agent. The law is well settled that the secret profits of an agent belong to his principal[5] and it is argued that since both interest and commission become the property of the principal he is chargeable with receiving a usurious amount. Granting that the principal is entitled to recover this commission, since he made the loan in ignorance of such excess, he cannot be charged with the intent which is essential to usury.[6] It is true, as argued, that this requirement is satisfied if an intent to take an amount exceeding the statutory rate exists, a criminal purpose being unnecessary. But it is clear that the lender has entertained no such intent. Nor can he be charged with the agent's intent since the acts of an agent outside of the scope of his authority are not imputable to the principal. It follows that if the principal makes the loan with knowledge of the agent's exaction he is chargeable with usury even though he receive no benefits from it.[7]

Where the principal, subsequent to the loan and prior to suing on the obligation, learns of and recovers the commission it is doubtful if the courts would protect him against the plea of usury. It is true that the agent was not acting ostensibly for the principal in exacting the commission, and an act, in order to be capable of ratification, must have been done for the person ratifying it. But it may well be argued that, under the rule concerning secret profits, the agent in receiving a commission is necessarily accepting it for his principal, although in fact he may not so intend. On the other hand, recovery of secret commissions by the principal, subsequent to a suit on the obligation is logical, and the agent's inability to retain such gains would doubtless discourage the practice of seeking them. It is questionable, however, whether such a suit would be sustained.

If, however, the *borrower* may recover such commission from the agent, it is arguable that no secret profits in fact exist, and the case of *Condit* v. *Baldwin*,[8] which established the general doctrine, apparently proceeds on this theory. The exact form of this recovery, however, is by no means clear, since a usurious premium on a non-usurious loan seemingly amounts only to extortion.[9] It is submitted, however, that agent's act is a sort of equitable duress and this would seem to offer a possible basis for recovery.

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[3]Austin *v.* Harrington (1855) 28 Vt. 130.

[4]New England etc. Co. *v.* Gay (1888) 33 Fed. 636.

[5]5 COLUMBIA LAW REVIEW 319.

[6]Call *v.* Palmer *supra.*

[7]Borcherling's Exec. *v.* Trefz (1885) 40 N. J. Eq. 502.

[8](1860) 21 N. Y. 219.

[9]Bell *v.* Day *supra* (dissenting opinion).